IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 125 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?No

2. To be referred to the Reporter or not?
No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUAJRAT

Versus

JASVANTSINH BHAGWANSINH DARBAR

Appearance:
D.A. Patel, APP, for Appellant
MR AJ PATEL for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10,11

CORAM : MR.JUSTICE J.M.PANCHAL and MR.JUSTICE M.H.KADRI

Date of decision: 10/09/97

ORAL JUDGMENT : (Per: Panchal, J.)

By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned legality and propriety of judgment

and order dated June 20, 1995, rendered by the learned Assistant Sessions Judge, Mehsana, in Sessions Case No.108 of 1993, by which the respondents are acquitted of the offences punishable under Sections 395 and 397 of the Indian Penal Code.

Original informant, Kamlaben Joitaram Patel, and injured witnesses Jivatben Jeevandas, Taraben Haribhai, Jethiben Kantilal, and Jeevathiben Jeevanlal are residents of village Memadpur, Taluka and District Mehsana. On the date of incident, i.e., August 27, 1992, the original informant and the injured witnesses had gone to the field of Haribhai Manilal Patel for bringing grass for cattle. According to the prosecution case, the respondents had entered the field of Haribhai Manilal Patel with weapons and objected as to why the informant and injured witnesses had come to the field, as the said field was to be purchased by them. After some altercation, original accused No.5 gave knife blow on the right hand palm of informant Kamlaben, whereas accused No.6 caused injury on her back with pick-axe, and accused No.1 caused injury on her left hand by means of stick. Accused No.6 pushed injured Puji and caused injury to her by means of scissors, whereas accused No.5 caused injury to Taraben on her right leg by means of wooden log, accused No.8 caused injury to Jethiben, and Jeevathiben was caused injury by accused No.7. On shouts being raised, the accused ran away. Complaint in the case was filed by Kamlaben at the Civil Hospital with head constable Kalyansinh Bhikhaji, who was discharging duties at the hospital. Thereafter, the complaint was forwarded to the police station where it was investigated. During the course of investigation, it transpired that, while causing injuries to the complainant and other witnesses, dacoity of gold ornaments was also committed and, therefore, offences punishable under Section 395 and 397 of the Indian Penal Code were added. At the conclusion of the investigation, the accused were chargesheeted in the court of the learned Judicial Magistrate, First Class, Mehsana, for the offences punishable under Sections 323, 324, 325, 147, 148, 149, 395, 397 of the Indian Penal Code.

As the offences punishable under Sections 395 and 397 are exclusively triable by a Court of Sessions, the case was committed to the Sessions Court for trial where it was numbered as Sessions Case No.108 of 1993, in the court of the learned Assistant Sessions Judge, Mehsana. The learned Assistant Sessions Judge framed necessary charge against the respondents. The charge was read over and explained to the respondents. The respondents did

not plead guilty to the charge and claimed to be tried. Therefore, the prosecution led oral as well documentary evidence against the respondents to substantiate the charge. After recording of evidence of prosecution witnesses was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the respondents denied the case of the prosecution, but did not lead any evidence in defence.

On appreciation of the evidence led by the prosecution, the learned Assistant Sessions Judge came to the conclusion that no reliable evidence was led by the prosecution to prove the charge under Section 395 and 397 of the Indian Penal Code. However, having regard to the evidence of the injured complainant and other injured witnesses, the learned Assistant Sessions Judge came to the conclusion that it was proved by the prosecution beyond reasonable doubt that the respondents had committed offences punishable under Sections 323, 324, 325, 147, 148 read with Sections 149 of the Indian Penal Code. In that view of the matter, the learned Assistant Sessions Judge acquitted the respondents of the offences punishable under Sections 395 and 397 of the Indian Penal Code, but convicted them under Sections 323, 324, 325, 147, 148 read with Sections 149 of the Indian Penal Code, and sentenced the respondents to suffer rigorous imprisonment for nine months as well a fine of Rs.100/-, in default to undergo simple imprisonment for one month. Acquittal of the respondents of the offences punishable under Sections 395 and 397 of the Indian Penal Code has given rise to the present appeal.

Mr. D.N. Patel, learned Additional Public Prosecutor, has taken us through the entire evidence on the record. The learned APP submitted that, in view of the evidence of the injured informant which is corroborated by the injured witnesses, the respondents ought to have been convicted of the offences punishable under Sections 395 and 397 of the Indian Penal Code. What was emphasized on behalf of the State was that the prosecution having led satisfactory evidence in support of the charges levelled against the respondent, the appeal should be allowed and the impugned judgment should be reversed.

Mr. A.J. Patel, learned counsel for the respondents, pleaded that cogent and convincing reasons have been assigned by the learned Judge for acquitting the respondents of the offences punishable under Sections 395 and 397 of the Indian Penal Code and, therefore, this

Court should not interfere with the acquittal of the respondents. What was highlighted by the learned counsel for the respondents was that, as regards the so-called dacoity of gold ornaments, there was no mention by complainant Kamlaben in her complaint nor gold ornaments were recovered during the course of investigation and, therefore, the appeal filed by the State should be dismissed.

We have considered the evidence led by the prosecution with regard to the so-called dacoity committed by the respondents. It is an admitted position that Kamlaben, who had lodged the first information report, never complained before the police officer that dacoity of gold ornaments was committed by any of the respondents at the time when they were assaulted in the field of Haribhai Manilal Patel. The fact that, subsequently, the offences punishable under Sections 395 and 397 of the Indian Penal Code were added, is not in dispute.Though thorough investigation was made into the first information report lodged by Kamlaben, gold ornaments were not recovered from any of the respondents after their arrest. On the facts and in the circumstances of the case,we are of the opinion that the prosecution has miserably failed to prove its case under Sections 395 and 397 of the Indian Penal Code against any of the respondents. The evidence on record indicates that the incident had taken place with reference to land bearing Survey No.408 situated at village Memadpur, Taluka & District Mehsana. The evidence does not establish that complainant Kamlaben and other witnesses were caused injuries while committing dacoity nor it is established that intention of the respondents was to commit dacoity. We fully agree with the reasons assigned by the learned Judge in paragraph 30 of the impugned judgment and hold that the offences punishable under Sections 395 and 397 of the Indian Penal Code are not made out by the prosecution.

This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Judge who had an advantage of observing demeanour of witnesses. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and

convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

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(swamy)